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Attorneys for the Foreign Representative

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re
BLACK GOLD S.A.R.L.,
Debtor in a Foreign Proceeding.

Case No. 4:20-bk-41815

Chapter 15

**NOTICE OF THE MOTION OF THE
FOREIGN REPRESENTATIVE TO
REOPEN THE CHAPTER 15 CASE**

Date: [To Be Set]
Time: [To Be Set]
Place: [To Be Set]

Jean-Paul Samba, in his capacity as the trustee and foreign representative (the “Foreign Representative”) of the foreign debtor Black Gold S.a.R.L. (the “Debtor”) in a foreign proceeding under Monegasque law (the “Monegasque Proceeding”) provides notice of the Motion of the Foreign Representative to Reopen the Chapter 15 Case.

Any objection to the requested relief, or a request for hearing on the matter, must be filed and served upon the initiating party within 21 days of mailing the notice;

Any objection or request for a hearing must be accompanied by any declarations or memoranda of law any requesting party wishes to present in support of its position;

If there is no timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default.

In the event of a timely objection or request for hearing: The initiating party will give

1 at least seven days written notice of the hearing to the objecting or requesting party, and to
2 any trustee or committee appointed in the case.

3 DATED: February 27, 2023

Respectfully submitted,

4 DENTONS BINGHAM GREENEBAUM LLP
5 JAMES R. IRVING (*Admitted Pro Hac Vice*)
6 GINA M. YOUNG (*Admitted Pro Hac Vice*)

7 By: /s/ James R. Irving

James R. Irving

8 *Attorneys for the Foreign Representative*
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Case No. 4:20-bk-41815

Chapter 15

**MOTION OF THE FOREIGN
REPRESENTATIVE TO REOPEN THE
CHAPTER 15 CASE**

Date: [To Be Set]

Time: [To Be Set]

Place: [To Be Set]

Jean-Paul Samba, in his capacity as the trustee and foreign representative (the “Foreign Representative”) of the foreign debtor Black Gold S.a.R.L. (the “Debtor”) in a foreign proceeding under Monegasque law (the “Monegasque Proceeding”) pending before the Tribunal de Première Instance de Monaco (or the Court of First Instance of Monaco) (the “Monegasque Court”), respectfully moves (the “Motion”), pursuant to §§ 105 and 350(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 5010 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order reopening the Chapter 15 Case and granting related relief. In support of this Motion, the Foreign Representative respectfully states as follows:

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JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. § 1410(2).

BACKGROUND

2. On November 20, 2020 (the “Petition Date”), the Foreign Representative filed a voluntary petition [Docket No. 1] (the “Petition”) on behalf of the Debtor for relief under chapter 15 of the Bankruptcy Code in the Bankruptcy Court, thereby commencing the chapter 15 case (the “Chapter 15 Case”).

3. On the Petition Date, the Foreign Representative filed the *Foreign Representative’s Motion for Order Recognizing Foreign Main Proceeding and Granting Related Relief; Memorandum of Points and Authorities* [Docket No. 2] (the “Recognition Motion”) and the *Motion for an Order Granting Certain Provisional Relief* [Docket No. 3] (the “Stay Motion”), as well as declarations of the Foreign Representative [Docket No. 5] and the Debtor’s chief executive officer Lorenzo Napoleoni [Docket No. 6] in support thereof.

4. On November 23, 2020, International Petroleum Products and Additives Company, Inc. (“IPAC”) filed *Creditor IPAC’s Opposition to Motion for Provisional Relief* [Docket No. 12] in opposition to the Stay Motion.

5. On November 25, 2020, the Bankruptcy Court granted the Stay Motion on an interim basis pending the resolution of the recognition proceedings. [Docket No. 15]. Subsequently, the Bankruptcy Court extended the stay in various orders [Docket Nos. 36 and 51] while the Foreign Representative and IPAC litigated over whether foreign recognition should be granted.

6. On February 25, the Bankruptcy Court concluded the hearing on the Recognition Motion and read its opinion and order denying the Recognition Motion on the record.

7. On March 15, 2021, the Bankruptcy Court entered the Order denying recognition. [Docket No. 72].

8. On March 29, 2021, the Foreign Representative timely filed his *Notice of Appeal*. [Docket No. 73].

9. On February 17, 2022, the Bankruptcy Appellate Panel for the Ninth Circuit reversed the Bankruptcy Court’s Order [BAP Docket No. 27] (the “Appellate Order”).

10. On March 10, 2022, the BAP sent a certified copy of its judgment to the Bankruptcy Court. [BAP Docket No. 33].

11. On January 25, 2023, the Bankruptcy Closed the Chapter 15 Case for “inactivity.” Although the Foreign Representative did not seek any form of relief from the Bankruptcy Court subsequent to the entry of the Appellate Order, that was not because of any desire to see the Chapter 15 Case closed. Rather, the Foreign Representative’s focus was on the still pending Monegasque Proceeding before the Monegasque Court.

ARGUMENT

12. “A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b); *see also* FED. R. BANKR. P. 5010 (“A case may be reopened on motion of the debtor or any other party in interest pursuant to § 350(b) of the Code.”). According to the Ninth Circuit Bankruptcy Appellate Panel, “the reopening of a closed bankruptcy case is a ministerial act that functions primarily to enable the file to be managed by the clerk as an active matter and that, by itself, lacks independent legal significance and determines that nothing with respect to the merits of the case.” *In re Menk*, 241 B.R. 896, 913 (9th Cir. BAP 1999).

13. Sufficient cause exists to reopen the Chapter 15 Case because although there has not been any activity in the Chapter 15 Case since the BAP's judgment reversing the Order denying

1 recognition, the Monegasque Proceeding is still pending in Monaco. As such, the Foreign
2 Representative requires the Bankruptcy Court's assistance in ensuring the Monegasque Proceeding
3 is recognized in the United States, which the BAP's judgment affords, providing that the Chapter
4 15 Case is kept open pending the resolution of the Monegasque Proceeding.

5 14. It is common for chapter 15 cases to be open for years with little to no activity while
6 the foreign proceeding is pending and being resolved. Such is the purpose of the chapter 15 case—
7 to recognize a foreign proceeding and allowing the foreign court to administer such proceeding.
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9 15. Because the Chapter 15 Case was closed not as a result of a motion of the parties or
10 failure to meet some deadline, but because of an administrative decision at odds with the reality of
11 recognition proceedings under chapter 15 which are frequently dormant for months or years while
12 the action is in the foreign main proceeding, the Foreign Representative requests that the fee required
13 to reopen the Chapter 15 Case be waived. Typically, filing fees must be collected when a motion
14 to reopen a bankruptcy case is filed, unless the reopening is to correct an administrative error or for
15 actions related to the debtor's discharge. *See The Guide*, Volume 5, Ch. 15, § § 15.03(a) and (c));
16 *see also* 28 U.S.C. § 1930, Bankruptcy Court Miscellaneous Fee Schedule.
17

18 NOTICE

19 16. Notice of this Motion will be provided to: (i) the Office of the United States Trustee;
20 (ii) IPAC and its counsel; and (iii) any party that has requested notice in the Chapter 11 Case. The
21 Foreign Representative submits that no other or further notice is necessary.
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1 WHEREFORE, the Foreign Representative respectfully requests that the Bankruptcy Court
2 grant the relief requested herein, and enter an order in the form attached hereto as **Exhibit A**
3 reopening the case and granting such other and further relief as the Court may deem just and proper.

4
5 DATED: February 27, 2023

Respectfully submitted,

6 DENTONS BINGHAM GREENEBAUM LLP
7 JAMES R. IRVING (*Admitted Pro Hac Vice*)
8 GINA M. YOUNG (*Admitted Pro Hac Vice*)

9 By: /s/ James R. Irving

James R. Irving

10 *Attorneys for the Foreign Representative*
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7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

9 In re
10 BLACK GOLD S.A.R.L.,
11 Debtor in a Foreign Proceeding.

Case No. 4:20-bk-41815

Chapter 15

CERTIFICATE OF SERVICE

12
13 I, James R. Irving, declare that I am over the age of eighteen years and not a party to this
14 action. I am a Partner employed at Dentons Bingham Greenebaum, LLP, and my business address
15 is 3500 PNC Tower, 101 S. Fifth Street, Louisville, Kentucky, 40202.

16 On February 27, 2023, I caused a true and correct copy of the *Motion of the Foreign*
17 *Representative to Reopen the Chapter 15 Case* to be served by the Court's CM/ECF system on the
18 following parties:
19

20 International Petroleum Products and Additives Company, Inc.
c/o Vinay Vijay Joshi Amin Turocy & Watson LLP
21 160 West Santa Clara Street, Suite 975
San Jose, California 95113
22 vjoshi@thepatentattorneys.com

23 International Petroleum Products and Additives Company, Inc.
c/o David S. Levin
24 Levin Law Firm
25 405 Sherman Avenue
Palo Alto, California 94306
26 david@levinlawfirm.com

27
28 Office of the United States Trustee

1 Phillip J. Burton Federal Building
2 450 Golden Gate Ave. 5th Fl., #05-0153
3 San Francisco, CA 94102
4 timothy.s.laffredi@usdoj.gov

5 I declare under penalty of perjury of the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed this 27th day of February, 2023, at Louisville, Kentucky.

8 /s/ James R. Irving

9 James R. Irving

EXHIBIT A
(Proposed Order)

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Case No. 4:20-bk-41815

Chapter 15

**ORDER APPROVING MOTION OF THE
FOREIGN REPRESENTATIVE TO
REOPEN THE CHAPTER 15 CASE**

This Court having considered the *Motion of the Foreign Representative to Reopen the Chapter 15 Case* (the “Motion”)¹, filed by Jean-Paul Samba, in his capacity as the trustee and foreign representative (the “Foreign Representative”) of the foreign debtor Black Gold S.a.R.L. (the “Debtor”) in the above-captioned case (the “Chapter 15 Case”), pursuant to §§ 105 and 350(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 5010 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”),

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Upon entry of this Order, the Clerk will reopen the Chapter 15 Case.
3. The Foreign Representative is not required to pay any fees related to the filing of the Motion.

¹ Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Motion.

1 4. This Court shall retain jurisdiction to resolve any disputes or controversies arising
2 from the Motion or this Order.

3 **** END OF ORDER ****
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